(3)

(1)

Single Bench

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO.295 / 2006

APPLICANTS :

1. NANDU RAM BANDHE,
S/o Shri Darban Bandhe,
aged about 56 yrs, Patwari

2. Smt. PUNNIBAI BANDHE,
W/o Shri Nandu Ram Bandhe,
aged about 50 yrs

3. Smt. RAJKUMARI BANJARE,
W/o Shri Om Prakash Banjare,
aged about 22 yrs

All Resident of :-
Gram- Bhothli, Post- Farfoud,
P.S.- Arang, Distt.-
Raipur(C.G.).

RECEIVED COPY
CLERK to A.G. BILASPUR

(2100/06

Filed on 06/5/06
By Shri Manish Sharma
2/06/5/06

D.R. (J)

Versus

NON-APPLICANT :

State of Chhattisgarh
Through Police Station, Arang,
Distt Raipur (C.G.)

CRIMINAL REVISION U/S 397 READ WITH SECTION 401 OF THE CODE OF CRIMINAL PROCEDURE.----

XI-HC-22

A.F.R. (61)

10.05.06

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.R. 295/ सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	10-05-2006 Shri Manish Sharma, learned counsel for the applicants. Shri Ravindra Agrawal, P.L. for the State. Learned counsel for the applicants submitted that he does not press the application M.(Cr.)P. No. 1026/2006 for stay which is accordingly dismissed as not pressed. Learned counsel for the applicants prays that this revision should be heard finally and disposed of today at the stage of admission. Not opposed. The revision is finally heard today. It is directed against an order dated 08-04-2006 passed by Shri R. S. Sharma, learned Sessions Judge, Raipur in Sessions Trial Number-128/2006 whereby charge under Section-306 of IPC was framed against the applicants. Brief facts are that the applicant No.3 Smt. Raj Kumari Banjare is the daughter of applicants No.1 & 2. She was married to the deceased. It is alleged that on 14-07-2005 Raj Kumari came to her maternal home. On 17-07-2005, the deceased went to Village- Bhothali to bring his wife back. It appears that the applicants wanted the deceased to live with them and did not send Raj Kumari with the deceased. Upon this, the deceased went to Police Station-Arang and lodged a report on 18-07-2005 that the applicants No.1 & 2 were frequently ~~taken~~ taking his wife to her maternal home and were not sending her back on his request, which	

62

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

has reached him in a stage of mental depression. It appears that on the same day i.e. 18-07-2005 after lodging the said report, Om Prakash went to his house and committed suicide by consuming poison. He left a suicidal note saying that he was committing suicide, being completely frustrated due to the attitude of the applicants. Post mortem was conducted on 19-07-2005. It revealed that death of Om Prakash was due to Cardio Respiratory failure as a result of consumption of poison.

Learned counsel for the applicants argued that even if the entire material placed by the prosecution was accepted at its face value, it would not even *prima facie* show the existence of a case under Section-306 of IPC against the applicants. On this ground, he prayed that the impugned order be set aside.

Shri Ravindra Agrawal, learned counsel appearing for the State while opposing the prayer did not point out the existence of any other material on record to indicate abetment or instigation by the applicants which resulted in suicide by Om Prakash.

Having considered rival submissions, I have perused the impugned order dated 08-04-2006 and also the charge under Section-306 of IPC framed against the applicants. Section 107 of the I.P.C. defines abetment as follows:

> **107. Abetment of a thing.**---- A person abets the doing of a thing, who----
>
> *First.*--- Instigates any person to do that thing: or

[पीछे देखिये

(63)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Secondly.---- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.---- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.--- A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.--- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

It is settled law that in order to establish the offence under Section-306 of I.P.C, the prosecution is required to prove that the suicide committed by the deceased was the direct and proximate cause of the abetment or instigation offered by the applicants. It is also well settled that the test for framing charge is that if the material produced by the prosecution is accepted at its face value, it would constitute the essential ingredients of an offence under Section 306 I.P.C. against the applicants. In the case of *Rakesh Vaishnav v. State of M.P.* **2004 (1) C.G.L.J. 324** it was held that in order to frame a charge under Section,

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

306 I.P.C. by the prosecution, it must be shown that the instigation, if any, was so direct, co-related, immediate and proximate with the act of suicide that it can be safely inferred that the deceased committed suicide only on account such instigation.

Applying the above principle to the material placed by the prosecution in the present case, I find that there is not even an iota of material to show that the applicants in any manner abetted or instigated the commission of suicide by Om Prakash. There is also no material to draw an inference that the applicants wanted Om Prakash to commit suicide. No wife or Parent-in-law would ever desire the son-in-law to commit suicide. It appears that the deceased being completely frustrated due to the attitude of the applicants No.1 & 2 in not sending his wife to her matrimonial home adopted an escapist view towards life by ending his life after consuming poison. It is thus clear that there is absolutely no material on record to show the existence of a case even *prima facie* under Section 306 I.P.C. against the applicants.

The learned Sessions Judge regrettably did not care to apply its mind to the material produced by the prosecution and mechanically framed charge under Section 306 I.P.C. against the applicants. Being the Sessions Judge, he was expected to know atleast the basic guiding principles for framing charge, well settled by a catena of decisions of the Apex Court as also by this Court. The impugned order is thus *ex facie* illegal and is liable to be set aside in exercise of revisional jurisdiction.

XI-HC-22

(65)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, this revision is allowed. The impugned order dated 08-04-2006 framing charge under Section-306 of IPC against the applicants is set aside. The applicants are discharged. Sd-/ Dilip Raosaheb Deshmukh Judge	